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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EVAN PLAINTIFF,

Plaintiff,

vs.

TAMPA INVESTMENT GROUP, LLC;
HALCYON CABOT PARTNERS LTD. FELIX
INVESTMENTS, LLC and JOHN BIVONA,

Defendants.

Case No. 5:12-cv-1117 EJD

Honorable Judge Edward J. Davila

**ANSWER TO
FIRST AMENDED COMPLAINT;
DEFENDANT’S COUNTER-CLAIMS:
1.DECEIT: INTENTIONAL
MISREPRESENTATION
2.DECEIT: NEGLIGENT
MISREPRESENTATION
3.DECEIT: CONCEALMENT
4.DECEIT: FALSE PROMISE
AND DEMAND FOR JURY TRIAL**

TAMPA INVESTMENT GROUP, LLC;

Cross-Complainant,

vs.

EVAN PLAINTIFF, and DOES 1 – 50,
inclusive,

Cross-Defendants.

Defendant Tampa Investment Group, LLC (“Defendant”), admits, denies, and alleges as follows:

1. Answering paragraph 1 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph and, on

1 that basis, denies each and every allegation contained therein.

2 2. Answering paragraph 2 of the Complaint, Defendant admits that Defendant is a
3 limited liability company organized under the laws of the State of Delaware with its principal place
4 of business in Florida. Defendant further admits that Robert Forlizzo and his two secretaries are the
5 two member-owners names in the Operating Agreement, with Forlizzo holding 99.99%
6 membership interests. Defendant also admits that Tampa's stated purpose was to engage in the
7 purchase and sale of pre-IPO technology securities. Except as so admitted, Defendant denies each
8 and every allegation contained in the said paragraph.

9 3. Answering paragraph 3 of the Complaint, Defendant is without sufficient knowledge
10 or information to form a belief as to the truth of the allegations contained in said paragraph and, on
11 that basis, denies each and every allegation contained therein.

12 4. Answering paragraph 4 of the Complaint, Defendant admits that Felix is currently
13 the defendant in an SEC action. Regarding the remaining allegations contained in paragraph 4,
14 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
15 allegations contained in said paragraph and, on that basis, denies each and every remaining
16 allegation contained therein.

17 5. Answering paragraph 5 of the Complaint, Defendant admits that during the relevant
18 period, Bivona served as Defendant's "lawyers," but denies Bivona "ostensibly" served as
19 Defendant's "lawyer." Defendant also denies Bivona was an "authorized representative" and
20 Bivona regularly communicated with Plaintiff, directly and indirectly, regarding the purchase of
21 Plaintiff's Twitter shares, including discussions about the purchase price and buyers for the shares.
22 Regarding the remaining allegations contained in paragraph 5, Defendant is without sufficient
23 knowledge or information to form a belief as to the truth of the remaining allegations contained in
24 said paragraph and, on that basis, denies each and every remaining allegation contained therein.

25 6. Answering paragraphs 6 & 7 of the Complaint, Defendant denies each and every
26 allegation contained therein.

27 7. Answering paragraph 8 of the Complaint, Defendant admits that it was formed with
28 only \$100 in capital and that Forlizzo and Bivona knew each other from high school and law

1 school, and Paul McCabe (“McCabe”) – the broker who initially solicited Plaintiff to sell his
2 Twitter shares – was introduced to Forlizzo through Bivona. Except as so admitted, Defendant
3 denies each and every remaining allegations contained in the said paragraph.

4 8. Answering paragraph 9 of the Complaint, Defendant admits that during the relevant
5 period Bivona sent numerous emails to Plaintiff on behalf of Defendant and these e-mail were sent
6 from Bivona’s law firm address (johnv@bivonalaw.com). Regarding the remaining allegations
7 contained in paragraph 9, Defendant is without sufficient knowledge or information to form a belief
8 as to the truth of the allegations contained in said paragraph and, on that basis, denies each and
9 every remaining allegation contained therein.

10 9. Answering paragraphs 10 & 11 of the Complaint, Defendant is without sufficient
11 knowledge or information to form a belief as to the truth of the allegations contained in said
12 paragraph and, on that basis, denies each and every allegation contained therein.

13 10. Answering paragraph 12 of the Complaint, Defendant admits that on or about March
14 6, 2012, Defendant removed this action to the Northern District of California pursuant to 28 U.S.C.
15 § 1661(b). Remaining statements in paragraph 12 does not contain allegations as to which a
16 response is required.

17 11. Answering paragraphs 13 & 14 of the Complaint, Defendant is without sufficient
18 knowledge or information to form a belief as to the truth of the allegations contained in said
19 paragraph and, on that basis, denies each and every allegation contained therein.

20 12. Answering paragraph 15 of the Complaint, Defendant denies each and every
21 allegation contained therein.

22 13. Answering paragraphs 16 through 20 of the Complaint, Defendant is without
23 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
24 said paragraph and, on that basis, denies each and every allegation contained therein.

25 14. Answering paragraph 21 of the Complaint, Defendant admits that Bivona and Felix
26 do not have direct ownership interests in Defendant. Defendant further admits that Bivona was the
27 lawyer for Defendant. Defendant denies that Twitter’s refusal to allow additional stock to be sold to
28 Felix caused Felix and Bivona to create other shell corporation to buy Twitter shares, including

1 Defendant. Defendant further denies that Bivona and Felix exercised control over Defendant and
2 was a “registered representative” that communicated and negotiated with Plaintiff regarding the
3 sale of his Twitter shares. Regarding the remaining allegations contained in paragraph 21,
4 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
5 allegations contained in said paragraph and, on that basis, denies each and every remaining
6 allegation contained therein.

7 15. Answering paragraphs 22 through 25 of the Complaint, Defendant is without
8 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
9 said paragraph and, on that basis, denies each and every allegation contained therein.

10 16. Answering paragraph 26 of the Complaint, Defendant denies that to increase the
11 chance that purchases would not be blocked, Defendant organized a scheme to have another entity
12 – Tampa – purchase the shares. Regarding the remaining allegations contained in paragraph 26,
13 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
14 allegations contained in said paragraph and, on that basis, denies each and every remaining
15 allegation contained therein.

16 17. Answering paragraph 27 of the Complaint, Defendant denies that through
17 Defendant, its alter ego, Felix had previously entered into at least two share purchase agreements
18 with other Twitter share or option holders, and knew of other investors who had done so, only to
19 have Twitter or its assigned prevent the purchases by exercising the Right of First Refusal
20 (“ROFR”). Regarding the remaining allegations contained in paragraph 27, Defendant is without
21 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
22 said paragraph and, on that basis, denies each and every remaining allegation contained therein.

23 18. Answering paragraphs 28 through 33 of the Complaint, Defendant is without
24 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
25 said paragraph and, on that basis, denies each and every allegation contained therein.

26 19. Answering paragraph 34 of the Complaint, Defendant admits that Plaintiff admitted
27 to McCabe that he felt more comfortable with Defendant, the original entity McCabe had
28 represented to be the buyer, because it had already submitted deals to Twitter. Defendant further

1 admits that there was an additional sentence added to a Non-binding Letter of Intent stating “For
2 the avoidance of doubt, if the right of first refusal is exercised by the Company or it’s assigned, this
3 Letter shall terminate and be rendered null and void.” Defendant denies that a letter agreement was
4 edited to add a sentence at the end of the paragraph containing the non-binding language in order to
5 confirm that such language was meant to address situations where the actions of Twitter frustrated
6 the sale. Regarding the remaining allegations contained in paragraph 34, Defendant is without
7 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
8 said paragraph and, on that basis, denies each and every remaining allegation contained therein.

9 20. Answering paragraph 35 of the Complaint, Defendant admits that a Non-binding
10 Letter of Intent has an expiration date of August 18, 2011, providing that it would “expire” if not
11 fully executed. Regarding the remaining allegations contained in paragraph 35, Defendant is
12 without sufficient knowledge or information to confirm or deny Plaintiff’s characterization of
13 “unambiguously” and “material terms,” and on that basis, denies each and every remaining
14 allegation contained therein.

15 21. Answering paragraph 36 of the Complaint, Defendant admits that the Term Sheet
16 was edited. Defendant further admits that the Term Sheet also reflected that if Twitter exercised the
17 ROFR, Halcyon would still receive its brokerage commission of \$1,011,194.25 from Plaintiff.
18 Defendant denies that a signature block was added for the buyer and that the term sheet provided
19 that Defendant was “to work in good faith and use best efforts to finalize and execute definitive
20 documentation.” Regarding the remaining allegations contained in paragraph 36, Defendant is
21 without sufficient knowledge or information to confirm or deny Plaintiff’s characterization of
22 “unambiguously” and “material terms,” and on that basis, denies each and every remaining
23 allegation contained therein.

24 22. Answering paragraphs 37 & 38 of the Complaint, Defendant is without sufficient
25 knowledge or information to form a belief as to the truth of the allegations contained in said
26 paragraph and, on that basis, denies each and every allegation contained therein.

27 23. Answering paragraph 39 of the Complaint, Defendant admits that a true and correct
28 copy of the Letter of Intent is attached to the Complaint as Exhibit A. Defendant denies that Exhibit

1 A is a Letter Agreement.

2 24. Answering paragraph 40 of the Complaint, Defendant admits that a true and correct
3 copy of the Term Sheet is attached to the Complaint as Exhibit B. Defendant denies that the Letter
4 Agreement provided that Defendant was “to work in good faith and use best efforts to finalize and
5 execute definitive documentation.” Regarding the remaining allegations contained in paragraph 40,
6 Defendant is without sufficient knowledge or information to form a belief as to the truth of the
7 allegations contained in said paragraph and, on that basis, denies each and every remaining
8 allegation contained therein.

9 25. Answering paragraph 41 of the Complaint, statements in paragraph 41 does not
10 contain allegations as to which a response is required.

11 26. Answering paragraph 42 of the Complaint, Defendant admits that Bivona is
12 Defendant’s lawyer. Regarding the remaining allegations contained in paragraph 42, Defendant is
13 without sufficient knowledge or information to form a belief as to the truth of the allegations
14 contained in said paragraph and, on that basis, denies each and every remaining allegation
15 contained therein.

16 27. Answering paragraph 43 of the Complaint, Defendant is without sufficient
17 knowledge or information to form a belief as to the truth of the allegations contained in said
18 paragraph and, on that basis, denies each and every allegation contained therein.

19 28. Answering paragraph 44 of the Complaint, Defendant denies that Defendant
20 represented to Plaintiff and Plaintiff otherwise reasonably understood that Defendant had the
21 requisite funds available. Defendant further denies that Defendant had no reasonable basis to
22 believe that the funds would later become available when the time for performance came.
23 Regarding the remaining allegations contained in paragraph 44, Defendant is without sufficient
24 knowledge or information to form a belief as to the truth of the allegations contained in said
25 paragraph and, on that basis, denies each and every remaining allegation contained therein.

26 29. Answering paragraph 45 of the Complaint, Defendant denies that Defendant’s
27 representations that the material terms of the Agreement – *i.e.* the price and quantity of shares –
28 were binding upon Defendant and Halcyon if Plaintiff fulfilled his obligations. Regarding the

1 remaining allegations contained in paragraph 45, Defendant is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in said paragraph and, on
3 that basis, denies each and every remaining allegation contained therein.

4 30. Answering paragraph 46 of the Complaint, Defendant is without sufficient
5 knowledge or information to form a belief as to the truth of the allegations contained in said
6 paragraph and, on that basis, denies each and every allegation contained therein.

7 31. Answering paragraph 47 of the Complaint, Defendant admits that Plaintiff advised
8 Defendant and Bivona that Twitter was not exercising the ROFR. Defendant further admits that
9 Plaintiff forwarded the Twitter stock transfer agreement to Defendant and Bivona. Regarding the
10 remaining allegations contained in paragraph 47, Defendant is without sufficient knowledge or
11 information to form a belief as to the truth of the allegations contained in said paragraph and, on
12 that basis, denies each and every remaining allegation contained therein.

13 32. Answering paragraph 48 of the Complaint, Defendant denies each and every
14 allegation contained therein.

15 33. Answering paragraph 49 of the Complaint, Defendant denies that Bivona continued
16 to mislead Plaintiff. Regarding the remaining allegations contained in paragraph 49, Plaintiff is
17 without sufficient knowledge or information to form a belief as to the truth of the allegations
18 contained in said paragraph and, on that basis, denies each and every remaining allegation
19 contained therein.

20 34. Answering paragraph 50 of the Complaint, Defendant is without sufficient
21 knowledge or information to form a belief as to the truth of the allegations contained in said
22 paragraph and, on that basis, denies each and every allegation contained therein.

23 35. Answering paragraph 51 of the Complaint, Defendant admits all allegations
24 contained therein.

25 36. Answering paragraph 52 of the Complaint, Defendant admits that Plaintiff sent
26 Defendant a formal demand for an assurance of performance pursuant to California Commercial
27 Code §2609. Defendant denies that Defendant's repudiation of obligations were clear. Defendant
28 further denies that it was Plaintiff's right to receive assurance of performance. Regarding the

1 remaining allegations contained in paragraph 52, Defendant is without sufficient knowledge or
2 information to form a belief as to the truth of the allegations contained in said paragraph and, on
3 that basis, denies each and every remaining allegation contained therein.

4 37. Answering paragraph 53 of the Complaint, Defendant denies Plaintiff suffered any
5 losses as a result of Defendants' breaches and representations. Regarding the remaining allegations
6 contained in paragraph 53, Defendant is without sufficient knowledge or information to form a
7 belief as to the truth of the allegations contained in said paragraph and, on that basis, denies each
8 and every remaining allegation contained therein.

9 38. Answering paragraph 54 of the Complaint, Defendant denies Plaintiff suffered other
10 damages as a result of Defendants' breaches. Defendant further denies that Halcyon instructed
11 Plaintiff to not sell his shares to anyone else. Regarding the remaining allegations contained in
12 paragraph 54, Plaintiff is without sufficient knowledge or information to form a belief as to the
13 truth of the allegations contained in said paragraph and, on that basis, denies each and every
14 remaining allegation contained therein.

15 39. Answering paragraphs 55 through 57 of the Complaint, Defendant is without
16 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
17 said paragraph and, on that basis, denies each and every allegation contained therein.

18 40. Answering paragraph 58 of the Complaint, Defendant denies each and every
19 allegation contained therein.

20 41. Answering paragraph 59 of the Complaint, Defendant admits that Defendant had
21 entered into two earlier transactions involving Twitter stock and that each was for a per-share price
22 at \$20. Defendant further admits that Twitter exercised its ROFR on both deals. Defendant denies
23 that the buyer-side broker on these deals was Paul McCabe and that Defendant received a fee of
24 \$18,000 for each of these transactions, supposedly for "services rendered." Regarding the
25 remaining allegations contained in paragraph 59, Defendant is without sufficient knowledge or
26 information to form a belief as to the truth of the allegations contained in said paragraph and, on
27 that basis, denies each and every remaining allegation contained therein.

28 42. Answering paragraph 60 of the Complaint, Defendant denies each and every

1 allegation contained therein.

2 43. Answering paragraphs 61 through 68 of the Complaint, Defendant is without
3 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
4 said paragraph and, on that basis, denies each and every allegation contained therein.

5 44. Answering paragraphs 69 & 70 of the Complaint, Defendant denies each and every
6 allegation contained therein.

7 45. Answering paragraph 71, Defendant hereby incorporates by reference all of the
8 answers to the foregoing paragraphs as though fully set forth herein.

9 46. Answering paragraph 72, Defendant denies that Defendant was obligated to perform
10 certain functions and duties to consummate the funding and eventual purchase of 100% of
11 Plaintiff's Twitter shares if Plaintiff complied with his obligations under the Letter of Intent.
12 Regarding the remaining allegations contained in paragraph 72, Defendant is without sufficient
13 knowledge or information to form a belief as to the truth of the allegations contained in said
14 paragraph and, on that basis, denies each and every remaining allegation contained therein.

15 47. Answering paragraph 73, Defendant admits that Halcyon would be paid a
16 commission if Defendant successfully purchased the shares or if Twitter exercised its ROFR, but
17 denies that Halcyon and Defendant were obligated to use good faith and best efforts to execute
18 additional documentation and consummate the purchase. Regarding the remaining allegations
19 contained in paragraph 73, Defendant is without sufficient knowledge or information to form a
20 belief as to the truth of the allegations contained in said paragraph and, on that basis, denies each
21 and every remaining allegation contained therein.

22 48. Answering paragraphs 74 through 76 of the Complaint, Defendant denies each and
23 every allegation contained therein.

24 49. Answering paragraph 77, Defendant hereby incorporates by reference all of the
25 answers to the foregoing paragraphs as though fully set forth herein.

26 50. Answering paragraph 78 of the Complaint, Defendant is without sufficient
27 knowledge or information to form a belief as to the truth of the allegations contained in said
28 paragraph and, on that basis, denies each and every allegation contained therein.

1 51. Answering paragraphs 79 through 83 of the Complaint, Defendant denies each and
2 every allegation contained therein.

3 52. Answering paragraph 84, Defendant hereby incorporates by reference all of the
4 answers to the foregoing paragraphs as though fully set forth herein.

5 53. Answering paragraphs 85 through 92 of the Complaint, Defendant denies each and
6 every allegation contained therein.

7 54. Answering paragraph 93, Defendant hereby incorporates by reference all of the
8 answers to the foregoing paragraphs as though fully set forth herein.

9 55. Answering paragraphs 94 through 99 of the Complaint, Defendant denies each and
10 every allegation contained therein.

11 56. Answering paragraph 100, Defendant hereby incorporates by reference all of the
12 answers to the foregoing paragraphs as though fully set forth herein.

13 57. Answering paragraphs 101 through 109 of the Complaint, Defendant denies each
14 and every allegation contained therein.

15 58. Answering paragraph 110, Defendant hereby incorporates by reference all of the
16 answers to the foregoing paragraphs as though fully set forth herein.

17 59. Answering paragraphs 111 through 114 of the Complaint, Defendant denies each
18 and every allegation contained therein.

19
20 These paragraphs set forth the statement of relief requested by Plaintiff to which no
21 response is required. Defendant denies that Plaintiff is entitled to any of the requested relief and
22 denies any allegations contained in the Prayer for Relief to which a response is required.

23
24 **FIRST AFFIRMATIVE DEFENSE**

25 Defendant is informed and believes and thereon alleges that, as to each alleged cause of
26 action, Plaintiff has waived any and all claims that he may have had against Defendant.

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SECOND AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff failed to take reasonable steps to mitigate, alter, reduce, or otherwise diminish his alleged damages, if any.

THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff has failed to state sufficient facts to constitute a cause of action against Defendant upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff's remedies are barred by the equitable doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff is estopped to assert any alleged claims or demands against Defendant.

SIXTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that Plaintiff did not exercise due caution or care with respect to the matters alleged in Plaintiff's Complaint and that if Plaintiff suffered any damage or injury, Plaintiff contributed in whole or in part to such damage or injury and therefore any remedy or recovery to which Plaintiff might otherwise be entitled must be denied or reduced accordingly.

SEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action Plaintiff's Complaint is barred by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff lacks standing to sue.

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NINTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff's Complaint is barred as the requested relief would constitute an undue hardship on Defendant.

TENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that, as to each alleged cause of action, Plaintiff's remedies are barred by the equitable doctrine of laches.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that if Plaintiff suffered any damage or injury, which Defendant expressly denies, such damage or injury was not caused by the acts or omissions of Defendant or anyone acting on its behalf, and therefore Plaintiff is barred from recovery from Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that if Plaintiff suffered any damage or injury as alleged in its Complaint, which Defendant expressly denies, Plaintiff's damages were caused in whole or in part by Plaintiff's own negligent acts or omissions, all of which negligence bars either completely or partially the recovery sought by Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint and each and every cause of action alleged therein are barred because Plaintiff engaged in conduct and activity sufficient to constitute a release of any claim or cause of action that it may otherwise have against DEFENDANT.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint and each and every cause of action alleged therein are barred in that, at all relevant times, Defendant acted reasonably and in good faith based upon relevant facts and circumstances known to them at the time they acted.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the Complaint and each and every cause of action alleged therein are barred because the damages suffered by Plaintiff, if any, were not foreseeable by Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's Cause of Action for "Breach of Written Agreement" is barred by Plaintiff's own failure to perform any of his own obligations.

SEVENTEENTH AFFIRMATIVE DEFENSE

Any representations made by Defendant were made in good faith and if Defendant made any misrepresentations, which it expressly denies, they were made innocently and not intentionally or negligently.

EIGHTEENTH AFFIRMATIVE DEFENSE

The Complaint, and each and every purported cause of action asserted against Defendant, was brought without reasonable cause and without a good faith belief that there was a justiciable controversy under the facts or applicable law.

NINETEENTH AFFIRMATIVE DEFENSE

The Complaint, and each and every purported cause of action asserted therein against Defendant, is barred by the doctrine of laches, in that Plaintiff has failed to act timely, to the detriment of Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

The Complaint, and each and every purported cause of action asserted against Defendant, was brought without reasonable cause and without a good faith belief that there was a justiciable controversy under the facts or applicable law.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Complaint, and each and every purported cause of action asserted therein against Defendant, is barred by the fact that the obligations set forth in the complaint were fully discharged by Defendant's performance.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The Complaint, and each and every purported cause of action asserted therein against Defendant, is barred by failure and/or lack of consideration.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereon alleges that the Complaint and each and every cause of action alleged therein fails to state facts sufficient to entitle Plaintiff to recover his costs.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining any recovery on the allegations set forth in the Complaint by the doctrine of impossibility.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining any recovery on the allegations set forth in the Complaint by the doctrine of frustration of purpose.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff is barred from obtaining any recovery on the allegations set forth in the Complaint by the doctrine of impracticability.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant presently has insufficient information upon which to form a belief as to whether additional affirmative defenses are available to it. Defendant therefore reserves the right to assert additional affirmative defenses in the event discovery or further analysis indicates that other defenses would be available.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Defendant hereby demands trial by jury of all issues triable by jury.

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1 **THEREFORE**, Tampa Investment Group, LLC respectfully pray for judgment herein as follows:

- 2 1. That Plaintiff take nothing by way of his Complaint;
- 3 2. A judgment dismissing Plaintiff's Complaint with prejudice;
- 4 3. A declaration that Defendant has not breached any contract or related
- 5 covenant;
- 6 4 For reasonable attorneys' fees;
- 7 5. For costs of suit incurred herein; and
- 8 6. For such other and further relief as the Court may deem just and proper.

9
10 **COUNTERCLAIMS**

11
12 Defendant/Counterclaimant, TAMPA INVESTMENT GROUP, LLC, ("Tampa") by and
13 through its undersigned counsel files these Counterclaims against Plaintiff/Counter Defendant,
14 EVAN WEAVER, ("Weaver") and alleges as follows:

15
16 **PARTIES**

17 1. Tampa is a limited liability company organized under the laws of the State of
18 Delaware, with its sole office located in the state of Florida. Tampa was organized as a limited
19 liability company for the sole purpose of acquiring stock of Twitter, Inc. ("Twitter").

20 2. Tampa is informed and believes and thereon alleges Weaver is an individual who, at
21 all times relevant hereto, resided in San Francisco, California. Weaver is a former employee of
22 Twitter.

23
24 3. Tampa does not know the true names of the Counter Defendants sued herein as
25 DOES 1 through 50, inclusive, and therefore sue such Counter Defendants by those fictitious
26 names. Tampa will amend this Counterclaim to allege their true names and capacities when
27 ascertained. Tampa is informed and believes, and thereon alleges, that each of these fictitiously
28

1 named Counter Defendants is in some manner responsible for the acts, omissions, and/or damages
2 alleged herein.

3 4. Tampa is informed and believe and thereon allege that each of the DOE Counter
4 Defendants sued herein as DOES 1 through 50 were the agents, employees, representatives,
5 partners, subsidiaries, parent or related companies or agencies, and/or joint ventures of the other
6 Counter Defendants sued herein and, at all times relevant hereto, were acting within the course and
7 scope of such agency, employment, representation, or other relationship, with the authority,
8 permission, consent and/or ratification of such other Counter Defendants.
9

10 **JURISDICTION AND VENUE**

11 5. This action is properly before this Court under diversity jurisdiction pursuant to 28
12 U.S.C §1332(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

13 6. The Counterclaims arise out of the same matters and transactions described in the
14 Complaint, and this Court has jurisdiction over the matters and transactions that are the subject of
15 these Counterclaims pursuant to Federal Rule of Civil Procedure 13.
16

17 7. Venue is proper in this judicial district under 28 U.S.C. §1391. Weaver resides in
18 this district, and a substantial part of the events and injury giving rise to the claims set forth herein
19 occurred in this district.

20 **GENERAL ALLEGATIONS**

21 8. Tampa is informed and believes and thereon alleges that, prior to the spring of 2011,
22 Weaver planned to quit his job at Twitter and sell all of his shares of Twitter stock.
23

24 9. Tampa is informed and believes and thereon alleges Weaver began pursuing his plan
25 to sell his shares of Twitter stock and leave his job at Twitter in the spring of 2011.

26 10. In 2010 and 2011, Paul McCabe ("McCabe"), a broker who worked for the firm
27 Halcyon Cabot Partners Ltd. ("HCP"), approached Weaver via email and through an online
28 network known as LinkedIn. McCabe identified himself as a broker licensed under HCP and Felix

1 Investments, LLC. McCabe identified himself as a broker who was working for a buyer of Twitter
2 stock.

3 11. McCabe and Weaver communicated about the terms of a proposed sale of Weaver's
4 Twitter stock to Tampa. The parties negotiated over a proposed price and the number of shares that
5 Tampa might purchase from Weaver.

6 12. On or about August 10, 2011, McCabe delivered to Weaver a draft letter of intent
7 ("LOI"), setting forth proposed terms. The LOI included language reflecting the fact that the LOI
8 was non-binding (such paragraph, as modified by the parties from time to time, the "Non-Binding
9 Paragraph"):
10

11 Notwithstanding any terms herein to the contrary, no term or provision of this Letter
12 (and no negotiations or oral representations made in connection with this
13 transaction) shall constitute a commitment, agreement or binding agreement on the
14 part of the Seller or Purchaser except for the provisions entitled "Expenses" and
"Confidentiality" which shall be binding and survive the termination of this Letter,
except to the extent agreed to in definitive and final documentation relating to the
share purchase.

15 13. After his receipt of this draft of the LOI, Weaver wrote to McCabe via email and
16 noted that the LOI was non-binding. Specifically, on August 10, 2011, after reviewing the first draft
17 of the LOI, Weaver sent an email to McCabe stating that his attorney "**was surprised to see that**
18 **the LOI isn't binding.**"

19 14. Weaver was represented by a transactional attorney named Daniel Hansen through
20 the negotiation, drafting and execution of the LOI.
21

22 15. On August 11, 2011, Weaver wrote to McCabe via email stating that his attorney
23 was "**on the fence about whether it should be binding or not...**"

24 16. Unbeknownst to Tampa and its agents, and contrary to Weaver's representations,
25 Weaver sought to modify the non-binding provisions in such a way that he might create an
26 argument to circumvent the non-binding provisions set forth in the Non-Binding Paragraph, while
27 concealing from Tampa the effect his revisions to the LOI.
28

17. At some time during the period between August 10, 2011 and August 12, 2011,

Weaver and/or his attorneys or agents drafted modifications to two separate drafts of the LOI that would have made binding the obligations set forth in the “Close” section. The “Close” section of the LOI sets forth the parties’ obligations to “**execute definitive documentation and expedite the closing of the purchase and sale.**” In both of these two drafts, the “Non-Binding Paragraph” was modified to read as follows:

Notwithstanding any terms herein to the contrary, no term or provision of this Letter (and no negotiations or oral representations made in connection with this transaction) shall constitute a commitment, agreement or binding agreement on the part of the Seller or Purchaser except for the provisions entitled “Close,” “Expenses” and “Confidentiality” which shall be binding and survive the termination of this Letter, except to the extent agreed to in definitive and final documentation relating to the share purchase.

18. The addition of the additional word “Close” would have made binding the provisions set forth in that section. Under the terms of these two drafts modified by Weaver between August 10, 2011, and August 12, 2011, the “Close” section would have been “excepted” or “carved out” of all of the “non-binding” provisions and added to the enumerated list of binding provisions—just like the listed “Expenses” and “Confidentiality” sections were specifically identified as being “binding.”

19. With such minimal editing, Weaver and/or his attorneys or agents modified the LOI in a significant fashion, as this would have modified the essence of the proposed purchase and sale from being a “non-binding” letter of intent to being a “binding” letter of intent. A **simple and more direct** means of making the LOI “binding” would have been to **delete the Non-Binding Paragraph**. Thus, Weaver demonstrates his obvious intent to conceal his efforts to effectively invalidate or “flip” the very essence of the LOI. However, Weaver never delivered either of these two versions of the LOI modified between August 10, 2011, and August 12, 2011 (the “Undelivered Drafts”) to Tampa or its agents.

20. Believing that Tampa and its agents would notice and understand the effect of the addition of “Close” in the Non-Binding Paragraphs in the Undelivered Drafts, Weaver and his agents chose not to deliver the Undelivered Drafts to Tampa and its agents. Instead, Weaver made

1 a more obtuse modification to the LOI in order to preserve his contorted “wiggle room” to dishonor
 2 the non-binding nature of the LOI. This new revision to the Non-Binding Paragraph reflected
 3 Weaver’s intent on August 12, 2011 through August 16, 2011 to dishonor the parties’ express
 4 agreement to execute a “non-binding” LOI and to dishonor the express non-binding language set
 5 forth in the LOI.

6 21. Rather than modify the paragraph so that the obligations to “Close” would become
 7 binding, Weaver inserted the following underlined sentence into the Non-Binding Paragraph to
 8 leave himself wiggle room to dishonor the parties’ agreement to execute a non-binding LOI and to
 9 make a nonsensical contorted argument that the LOI was binding but “conditional.”
 10

11 Notwithstanding any terms herein to the contrary, no term or provision of this Letter
 12 (and no negotiations or oral representations made in connection with this
 13 transaction) shall constitute a commitment, agreement or binding agreement on the
 14 part of the Seller or Purchaser except for the provisions entitled “Expenses” and
 15 “Confidentiality” which shall be binding and survive the termination of this Letter,
 16 except to the extent agreed to in definitive and final documentation relating to the
 17 share purchase. For the avoidance of doubt, if the right of first refusal is exercised by
 18 the Company or its assigns, this Letter shall terminate and be rendered null and void.

19 22. On August 12, 2011, Weaver wrote to McCabe via email that “**we’ll do the non-**
 20 **binding agreement.**” Weaver never intended to honor this representation.
 21

22 **WEAVER HAD NO INTENTION OF HONORING**
 23 **THE NON-BINDING NATURE OF THE LOI**
 24

25 23. Unbeknownst to Tampa and its agents, Weaver had no intention of honoring the
 26 non-binding terms of the proposed sale at the times he was representing his willingness to execute a
 27 “non-binding” agreement, including on August 12, 2011, when he emailed McCabe expressing his
 28 willingness to “do the non-binding agreement” and on August 16, 2011, when he executed the LOI
 with its express non-binding provisions set forth in the Non-Binding Paragraph. Tampa relied upon
 Weaver’s representation that he understood and agreed that the LOI documented the parties “non-
 binding agreement.”

24. On August 16, 2011, Tampa and Weaver executed the LOI. The express language in

1 the Non-Binding Paragraph of the final LOI reflects the non-binding nature of the LOI. However,
2 Weaver had no intent of honoring this express language in the Non-Binding Paragraph at the time
3 he executed the LOI on August 16, 2011. The Non-Binding Paragraph in the final LOI executed on
4 August 16, 2011, included Weaver's revision as underlined in paragraph 20 above.

5 25. Following the August 16, 2011, execution of the LOI with Weaver, Tampa reduced
6 its efforts to enter into any similar letters of intent with other shareholders of Twitter stock.

7 26. On September 16, 2011, Twitter declined to exercise its Right of First Refusal.
8 Weaver subsequently wrote via email to McCabe to inquire: "Is Tampa ready to go?"
9

10 27. Weaver knew that Tampa understood the parties executed a non-binding proposal
11 for the sale of his shares of Twitter stock. Weaver knew that Tampa understood it was not obligated
12 to purchase his shares of Twitter stock. Between September 16, 2011, and September 30, 2011,
13 Weaver demonstrated his knowledge that Tampa understood the LOI to be "non-binding" when he
14 emailed McCabe and Tampa's attorney John Bivona repeatedly, writing that he was "anxious" that
15 the deal "isn't going to happen."
16

17 28. Knowing that Tampa understood the LOI to be "non-binding," as Weaver had
18 represented to Tampa and as the LOI was drafted, Weaver began seeking a new buyer soon after
19 Twitter declined to exercise its right of first refusal.

20 29. On September 21, 2011, John Bivona wrote to Weaver that he would "see where we
21 are with regard to our investors and get back to you..." Weaver replied to John Bivona, and he
22 forwarded John Bivona's email to McCabe with a message to McCabe, with both of Weaver's
23 email messages showing he was not surprised Bivona needed to check on the status of the investors.
24

25 30. On September 30, 2011, John Bivona wrote Weaver to state that Tampa was unable
26 to raise funds from investors and could not buy his shares. Demonstrating his awareness that
27 Tampa understood the LOI was non-binding, on September 30, 2011, Weaver immediately wrote
28 back to John Bivona, writing, "Thanks, John. We will get back to you shortly."

**WEAVER DISHONORED THE NON-BINDING NATURE OF THE LOI
WHICH HAS HARMED TAMPA BY PREVENTING ITS SOLE BUSINESS PURPOSE**

31. On September 27, 2011, Weaver first demonstrated to McCabe and Tampa his intention to dishonor the non-binding nature of the LOI when he wrote an email to Paul McCabe stating “they [Tampa] are probably bound anyway.”

32. On information and belief, Tampa alleges that in or around the period from September 30, 2011, to October 2, 2011, Weaver communicated to employees of Twitter, including Twitter’s officers and legal staff as well as to other shareholders of Twitter, that Tampa was not a viable business enterprise and could not be trusted as a counter-party. Accordingly, Tampa’s reputation was damaged with Twitter and its shareholders and Tampa was unable to find Twitter shareholders who were willing to enter letters of intent or any other forms of agreement. Following Weaver’s deceitful misinformation, Tampa has been entirely frustrated and foreclosed from acquiring any Twitter stock, and has never been able to acquire any shares of Twitter stock.

33. Weaver’s intention to dishonor the non-binding nature of the LOI was ultimately confirmed on October 7, 2011, when Weaver wrote a letter demanding that Tampa purchase his shares of Twitter stock.

34. As a natural result of his intent to dishonor his express representation that he was willing to enter a “non-binding agreement” and his intent to dishonor the express language in the LOI, Weaver has disparaged Tampa by dishonoring the non-binding nature of the LOI, and thereby misrepresenting the events related to the LOI among the business associates who are crucial to Tampa’s sole business purpose—Twitter and Twitter’s shareholders. As a natural result of his dishonoring of the LOI, misrepresentation of the events and thereby his disparagement of Tampa, Weaver has damaged Tampa’s reputation in the high-tech investment community including among Twitter and its shareholders. Weaver’s actions to misrepresent his intent to enter a non-binding agreement and his misrepresentation through his execution of the LOI which contained the Non-Binding Paragraph have harmed and entirely obstructed Tampa’s sole business purpose of

1 existence—the acquisition of Twitter stock for investment and gain.

2 **WEAVER UNDERSTOOD AND REPRESENTED HIS UNDERSTANDING OF THE**
 3 **MEANING OF “BINDING” AND “NON-BINDING”**

4 35. In writing, on numerous occasions, Weaver communicated his clear understanding
 5 of the words “binding” and “non-binding,” and thus he specifically misrepresented his intent to
 6 enter a non-binding agreement. In at least three emails between Weaver and Tampa’s agents
 7 exchanged before the August 16, 2011 execution of the LOI, Weaver demonstrated his clear
 8 understanding of the distinction between binding letters of intent and non-binding letters of intent.

9 36. Immediately upon the receipt of the first draft of the letter of intent, Weaver
 10 specifically wrote the issue of its “non-binding” nature, even referring to his attorney’s
 11 unambiguous understanding of its “non-binding” terms. On August 10, 2011, after reviewing the
 12 first draft of the LOI, Weaver wrote to McCabe via email that his attorney “was surprised to see
 13 that the LOI isn’t binding.”
 14

15 37. On August 11, 2011, Weaver wrote to McCabe via email that his attorney was “on
 16 the fence about whether it should be binding or not...”

17 38. On August 12, 2011, Weaver wrote to McCabe via email to represent “we’ll do the
 18 non-binding agreement...”

19 39. In at least four emails after the August 16, 2011 execution of the LOI Weaver
 20 demonstrated his clear understanding of the distinction between “binding” and “non-binding.”
 21

22 40. On September 20, 2011, Weaver wrote to Paul McCabe regarding the stock transfer
 23 agreement (the definitive documentation for the purchase and sale) and emphasized “the transfer
 24 agreement, which is binding...”

25 41. On September 26, 2011, Paul McCabe wrote an email to Weaver explaining that
 26 they might have had better results using “the standard Twitter docs,” and Weaver replied “What
 27 was different in the docs?” On September 27, 2011 Paul McCabe answered Weaver that other deals
 28 used “docs that are binding from the beginning.” On September 27, 2011, Weaver then replied to

1 Paul McCabe via email, stating that “yeah, in hindsight binding would have been better.”

2 42. On September 29, 2011, Weaver wrote to another broker to advise that the “original
3 buyers backed out” and inquired whether they “have buyers willing to do binding escrowed deal?”
4 Weaver expressed his preference for a binding deal in numerous other emails following the
5 frustration of his prospective sale to Tampa.

6 43. Contemporaneously with the negotiation and execution of the LOI with Tampa, in
7 August of 2011, Weaver also demonstrated his familiarity with the distinction between binding and
8 non-binding agreements through his negotiations with other prospective buyers, where Weaver had
9 already received letters of intent that were non-binding. Two drafts of a letter of intent proposed by
10 Stratim Capital (dated August 9, 2011 and August 11, 2011) included the following non-binding
11 provision:
12

13 Non-Binding. Except for paragraph 4 which shall be legally binding, this Offer is not
14 intended to create and it does not create any legal rights, obligations or consequences
15 and only those rights and obligations that are set forth in the definitive agreements,
duly executed by all parties to them, will create any legally binding rights,
obligations or consequences with respect to the subject matter of the letter.

16 44. Similar to the ultimate LOI between Tampa and Weaver, the non-binding paragraph
17 of the Stratim Capital LOI specifically excepted the binding provisions in “paragraph 4” regarding
18 “Non-Solicitation and Confidentiality,” but not the “consummation” or “closing” of a sale.
19 Through his agents Weaver was specifically admonished to honor the binding Confidentiality
20 provisions of the Stratim Capital LOI.
21

22 45. Through his agents, Weaver was once instructed, in writing, to “Go to hell” when he
23 requested a binding, escrowed transaction for his stock.

24 **FIRST CAUSE OF ACTION AGAINST WEAVER**
25 **DECEIT: INTENTIONAL MISREPRESENTATION**

26 46. Tampa re-alleges paragraphs 1 through 45 above and incorporates them herein by
27 reference as though set forth in full.

28 47. On or about August 12, 2011, Weaver falsely represented to Tampa that he was

1 agreeing to a non-binding LOI. On or about August 16, 2011, Weaver falsely represented to Tampa
2 that he was agreeing to a non-binding LOI by executing an LOI which was drafted to reflect its
3 non-binding nature as set forth in the Non-Binding Paragraph.

4 48. The representations made by Weaver were in fact false. The true facts were that
5 Weaver never intended to agree to and honor a non-binding LOI and he concealed this fact from
6 Tampa.

7 49. When the Weaver made these representations, Weaver knew them to be false, and
8 these representations were made by Weaver with the intent to defraud and deceive Tampa and with
9 the intent to induce Tampa to execute the LOI. At the time Weaver made the representations and
10 promises to Tampa, Weaver had no intention of performing or honoring them.

12 50. At the time Weaver's promises were made and at the time Tampa took the actions
13 herein alleged, Tampa was ignorant of Weaver's secret intention not to honor a non-binding LOI
14 and Tampa could not, in the exercise of reasonable diligence, have discovered Weaver's secret
15 intention.

16 51. In reliance on these representations, Tampa was induced to and relied upon
17 Weaver's representation that the he understood and agreed that the LOI documented the parties'
18 "non-binding agreement." On August 16, 2011, Tampa and Weaver executed the LOI.
19 Accordingly, following the execution of the LOI Tampa reduced its efforts to enter into similar
20 letters of intent with other shareholders of Twitter stock. The express language in the Non-Binding
21 Paragraph of the final August 16, 2011 LOI reflects the non-binding nature LOI. However, Weaver
22 had no intent of honoring this express language in the Non-Binding Paragraph at the time he
23 executed the LOI on August 16, 2011. Had Tampa known the actual facts, Tampa would not have
24 taken such actions.

25 52. As a result of Weaver's fraudulent conduct, Tampa has suffered compensatory,
26 general and special damages in an amount according to proof at trial. As a natural result of
27
28

Weaver's intent to dishonor his express representation that he was willing to enter a "non-binding agreement" and his intent to dishonor the express language in the LOI, Weaver has disparaged Tampa by dishonoring the non-binding nature of the LOI, thereby misrepresenting the events related to this action among the business associates who are crucial to Tampa's sole business purpose—Twitter and Twitter's shareholders. As a natural result of Weaver's dishonoring of the LOI, misrepresentation of the events and thereby his disparagement of Tampa, Weaver has damaged Tampa's reputation in the high-tech investment community including among Twitter and Twitter's shareholders. His actions to misrepresent his intent to enter a non-binding agreement and his misrepresentation through his execution of the LOI which contained the Non-Binding Paragraph have harmed and completely obstructed Tampa's sole business purpose –the acquisition of Twitter stock for investment and gain.

53. Additionally, Weaver acted with malice, fraud and/or oppression and, thus, Tampa is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION AGAINST WEAVER
DECEIT: NEGLIGENT MISREPRESENTATION

54. Tampa re-alleges paragraphs 1 through 53 above and incorporates them herein by reference as though set forth in full.

55. On or about August 12, 2011, Weaver falsely represented to Tampa that he was agreeing to a non-binding LOI. On or about August 16, 2011, Weaver falsely represented to Tampa that he was agreeing to a non-binding LOI by executing an LOI which was drafted to reflect its non-binding nature as set forth in the Non-Binding Paragraph.

56. The representations made by Weaver were in fact false. Weaver may have honestly believed that the representation was true; Weaver had no reasonable grounds for believing the representation was true when he made it.

57. At the time Weaver's representations were made and at the time Tampa took the actions herein alleged, Tampa was ignorant of Weaver's secret intention not to honor a non-binding

1 LOI and Tampa could not, in the exercise of reasonable diligence, have discovered Weaver's secret
2 intention.

3 58. Weaver intended that Tampa rely on these representations. Tampa did rely on these
4 representations by executing the LOI. In reliance on these representations, Tampa was induced to
5 and relied upon Weaver's representation that the he understood and agreed that the LOI
6 documented the parties' "non-binding agreement." On August 16, 2011, Tampa and Weaver
7 executed the LOI. Accordingly, following the execution of the LOI Tampa reduced its efforts to
8 enter into similar letters of intent with other shareholders of Twitter stock. The express language in
9 the Non-Binding Paragraph of the final August 16, 2011 LOI reflects the non-binding nature of the
10 LOI. However, Weaver had no intent of honoring this express language in the Non-Binding
11 Paragraph at the time he executed the LOI on August 16, 2011. Had Tampa known the actual facts,
12 Tampa would not have taken such actions.

14 59. As a result of Weaver's fraudulent conduct, Tampa has suffered compensatory,
15 general and special damages in an amount according to proof at trial. As a natural result of
16 Weaver's intent to dishonor his express representation that he was willing to enter a "non-binding
17 agreement" and his intent to dishonor the express language in the LOI, Weaver has disparaged
18 Tampa by dishonoring the non-binding nature of the LOI, thereby misrepresenting the events
19 related to this action among the business associates who are crucial to Tampa's sole business
20 purpose—Twitter and Twitter's shareholders. As a natural result of Weaver's dishonoring of the
21 LOI, misrepresentation of the events and thereby his disparagement of Tampa, Weaver has
22 damaged Tampa's reputation in the high-tech investment community including among Twitter and
23 Twitter's shareholders. His actions to misrepresent his intent to enter a non-binding agreement and
24 his misrepresentation through his execution of the LOI which contained the Non-Binding Paragraph
25 have harmed and entirely obstructed Tampa's sole business purpose of existence—the acquisition
26 of Twitter stock. Additionally, Weaver acted with malice, fraud and/or oppression and, thus, Tampa
27
28

1 is entitled to an award of punitive damages.

2 **THIRD CAUSE OF ACTION AGAINST WEAVER**
 3 **DECEIT: CONCEALMENT**

4 60. Through his written representations on August 12, 2011, and again through his
 5 execution of the final LOI on August 16, 2011, Weaver disclosed a material fact to Tampa by
 6 stating that he was willing to enter a “non-binding agreement,” but he intentionally failed to
 7 disclose that he intended to dishonor the “non-binding” nature of the LOI by arguing that it was
 8 “binding” but “conditional.” Weaver intentionally failed to disclose that he intended to dishonor
 9 the “non-binding” nature of the LOI by arguing that it was “binding” but “conditional,” and this
 10 fact was known only to him. Tampa could not have discovered the fact that Weaver intended to
 11 dishonor his representations that he would execute a “non-binding agreement.”

12 61. Weaver actively concealed this material fact from Tampa and prevented Tampa from
 13 discovering this fact by concealing the Undelivered Drafts of the LOI. Weaver actively concealed
 14 this material fact from Tampa and prevented Tampa from discovering this fact by sharing his true
 15 intentions with only his legal counsel and his other agents and associates who assisted him in
 16 devising his scheme.

17 62. Tampa did not know that Weaver intended to dishonor the “non-binding” nature of
 18 the LOI by arguing that it was in fact “binding” but “conditional.”

19 63. Weaver intended to deceive Tampa by concealing the fact that he intended to
 20 dishonor the “non-binding” nature of the LOI by arguing that it was in fact “binding” but
 21 “conditional.”

22 64. Tampa reasonably relied on Weaver’s deception.

23 65. As a result of Weaver’s fraudulent conduct, Tampa has suffered compensatory,
 24 general and special damages in an amount according to proof at trial. As a result of Weaver’s intent
 25 to dishonor his express representation that he was willing to enter a “non-binding agreement” and
 26 his intent to dishonor the express language in the LOI, Weaver has disparaged Tampa by
 27
 28

1 dishonoring the non-binding nature of the LOI, thereby misrepresenting the events related to this
 2 action among the business associates who are crucial to Tampa's sole business purpose—Twitter
 3 and Twitter's shareholders. Consistent with this dishonoring of the LOI, misrepresentation of the
 4 events and thereby his disparagement of Tampa, Weaver has damaged Tampa's reputation in the
 5 high-tech investment community, including among Twitter and its shareholders. His actions to
 6 misrepresent his intent to enter a non-binding agreement and his misrepresentation through his
 7 execution of the LOI which contained the Non-Binding Paragraph have harmed and entirely
 8 obstructed Tampa's sole business purpose of existence—the acquisition of Twitter stock.
 9 Additionally, Weaver acted with malice, fraud and/or oppression and, thus, Tampa is entitled to an
 10 award of punitive damages.
 11

12 66. Weaver's concealment was a substantial factor in causing Tampa's harm as it would
 13 not have executed the LOI with Weaver had it known of his true concealed intentions.
 14

15 **FOURTH CAUSE OF ACTION AGAINST WEAVER**
 16 **DECEIT: FALSE PROMISE**

17 67. Tampa re-alleges paragraphs 1 through 66 above and incorporates them herein by
 18 reference as though set forth in full.
 19

20 68. On or about August 12, 2011, Weaver falsely and fraudulently promised to Tampa
 21 that he was agreeing to a non-binding LOI. On or about August 16, 2011, Weaver falsely and
 22 fraudulently promised to Tampa that he was agreeing to a non-binding LOI by executing an LOI
 23 which was drafted to be non-binding as set forth in the Non-Binding Paragraph.

24 69. At the time Weaver made these promises to Tampa, Weaver had no intention of
 25 agreeing to a non-binding LOI.
 26

27 70. At the time Weaver's promises were made and at the time Weaver took the other
 28 actions herein alleged, Tampa was ignorant of Weaver's secret intention not to agree to a non-
 binding agreement and Tampa could not, in the exercise of reasonable diligence, have discovered

Weaver's secret intention.

71. If Tampa has known of the actual intention of Weaver, Tampa would not have agreed to the LOI.

72. As a result of Weaver's false promises, Tampa has suffered compensatory, general and special damages in an amount according to proof at trial. As a result of Weaver's false promises, Tampa has suffered compensatory, general and special damages in an amount according to proof at trial. As a result of his intent to dishonor his express representation that he was willing to enter a "non-binding agreement" and his intent to dishonor the express language in the LOI, Weaver has disparaged Tampa by dishonoring the non-binding nature of the LOI, thereby misrepresenting the events related to this action among the business associates who are crucial to Tampa's sole business purpose—Twitter and Twitter's shareholders. As a result of dishonoring the LOI, misrepresentation of the events and thereby his disparagement of Tampa, Weaver has damaged Tampa's reputation in the high-tech investment community. His actions to misrepresent his intent to enter a non-binding agreement and his misrepresentation through his execution of the LOI which contained the Non-Binding Paragraph have harmed and entirely obstructed Tampa's sole purpose of existence—the acquisition of Twitter stock for investment and gain. Additionally, Weaver acted with malice, fraud and/or oppression and, thus, Tampa is entitled to an award of punitive damages.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Tampa hereby demands trial by jury of all issues triable by jury.

WHEREFORE, Tampa prays for judgment as follows:

1. For actual damages according to proof at the time of trial;
2. For compensatory, general and special damages damages according to proof at the time of trial;
3. For punitive damages against Weaver for fraud in that amount sufficient to punish

1 him and to deter similar conduct in the future;

2 4. For attorneys' fees as authorized by statute and agreement;

3 5. For costs of suit incurred herein;

4 6. For all other relief the Court deems proper.

5
6
7 Dated: April 14, 2014

The King Law Group

8 By: /s/ David A. King
9 David A. King
10 Attorneys for Defendant/Counterclaimant
11 Tampa Investment Group, LLC
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